# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 10684 of 2001

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**AHMEDABAD MUNICIPAL TRANSPORT SERVICES - Petitioner(s)**

**Versus**

**ALIMINYA N SAIYAD - Respondent(s)**

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**Appearance :**

MR HS MUNSHAW for Petitioner(s) : 1,
MR AI SURTI for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 13/01/2006**

**ORAL JUDGMENT**

1. This petition is directed against the award dated 07.12.2000 passed by the Labour Court, Ahmedabad in reference (LCA)No. 1741/82 whereby the Labour Court has directed the petitioner to reinstate the respondent with

continuity of service and 50% backwages.

2. The brief facts of the case are that the respondent was working as a fitter with the petitioner corporation. He was quite irregular in his service most serious among them being absenteeism for 182 days in the year 1981 and he was also issued charge-sheet for the said absenteeism. A departmental inquiry was initiated against the respondent but the same was not co-operated by him. At the conclusion of the inquiry, on the basis of the proved charges, the respondent was dismissed from service. Being aggrieved by the said dismissal, the respondent raised an industrial dispute which was in turn referred to the Labour Court, Ahmedabad for adjudication. The Labour Court after hearing the parties passed the aforesaid award.

3. Mr H.S Munshaw, learned counsel for the petitioner has contended that the Labour Court has ought not to have granted reinstatement with continuity of service and backwages. He has further contended that a departmental inquiry was also initiated against the respondent for the charge of 182 days absenteeism without permission and inspite of opportunities given by the Inquiry Officer,

he failed to co-operate and produce any evidence or defend his case.

3.1 Mr Munshaw has also contended that even the past record of the respondent is not satisfactory as there are 13 defaults, many of which are for absenteeism. He has further contended that the respondent himself had remained absent from duty and the Labour Court has granted continuity of service and backwages just on the ground that he has a large family to feed and hence the award requires interference.

4. The matter was before this Court on 27.12.05 and it was adjourned to 10.01.06. On 10.01.06, the following order was passed by this Court :

> "Mr Munshaw was present in all the three rounds. Mr Surti is not present. Even if Mr Surti is not present on the next date, the matter will be taken up in the first round. S.O to 13.01.06"

Even today Mr A.I Surti is not present and so the matter is taken up for hearing in the first round.

5. Heard Mr H.S Munshaw, learned counsel for the petitioner. I have gone through the award of the Labour Court and the evidence available on record. In view of

the observation made by the Labour Court holding the departmental inquiry to be bad, I am in complete agreement with the award qua reinstatement on the original post and hence I am of the opinion that the award granting reinstatement is not required to be interfered with.

6. However, I am of the view that since the respondent himself has not reported for duty and not co-operated in the departmental inquiry, the Labour Court ought not to have granted continuity of service. The Labour Court has therefore committed an error in granting continuity of service and the same is required to be interfered with.

7. Moreover, the Labour Court while granting backwages ought to have considered the long period of 18 years and the fact that the petitioner corporation is a Public Sector. Even otherwise, the law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan

Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> "10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle "no work no pay" as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of

> salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.
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> 11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.
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> 12.The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. In the premises aforesaid, this petition is partly allowed. The award of the Labour Court granting continuity of service and backwages is quashed and set aside. The award qua reinstatement on the original post is confirmed. The award of the Labour Court is modified

to the above extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.S. JHAVERI, J.)

Divya//